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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 ANDRE HAYES,

10 Petitioner,

11 v.

12 KEN QUINN,

13 Respondent.

Case No. C06-0507RSL

ORDER OF TRANSFER

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15 This matter comes before the Court on petitioner's letter requesting that the Court  
16 suspend his sentence. Petitioner was previously warned that "[a]ny further requests for  
17 relief contained in letters will not be considered." (Dkt. #24).

18 Even if the Court were inclined to consider petitioner's request, it is without  
19 jurisdiction to do so. The Ninth Circuit has made clear that § 2254 is the exclusive  
20 avenue for a state prisoner to challenge the constitutionality of his detention when the  
21 prisoner is in custody pursuant to a state court judgment. White v. Lambert, 370 F.3d  
22 1002, 1007 (9<sup>th</sup> Cir. 2004). Because petitioner is challenging his sentence, his current  
23 motion must be construed as a request for relief pursuant to § 2254. However, Hayes'  
24 prior petition challenging the same conviction was dismissed with prejudice.

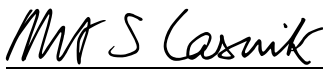
25 Accordingly, the instant petition must be deemed successive. This Court is without

1 jurisdiction to consider a successive petition or motion until the Ninth Circuit Court of  
2 Appeals has authorized its filing. 28 U.S.C. § 2244(b)(3)(A). Accordingly, this case is  
3 hereby TRANSFERRED to the Ninth Circuit Court of Appeals, in the interests of justice,  
4 pursuant to 28 U.S.C. § 1631 and Ninth Circuit Rule 22-3.

5 Petitioner is advised that this transfer does not of itself constitute compliance with  
6 § 2244(b)(3) and Ninth Circuit Rule 22-3. Petitioner must still file a motion for leave to  
7 proceed in the Court of Appeals and make the showing required by § 2244(b)(2).

8 The Clerk of the Court is directed to transfer petitioner's motion to suspend his  
9 sentence (Dkt. #26) to the Ninth Circuit Court of Appeals. The Clerk shall, however,  
10 retain a copy of the motion and of this Order in the docket.

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12 DATED this 18th day of March, 2010.

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16 Robert S. Lasnik  
17 United States District Judge  
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